

HOUSE BILL NO. 84

INTRODUCED BY T. SCHMIDT

1
2
3
4
5
6
7
8
9

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL EXCHANGE COMPANIES AND INTEREXCHANGE CARRIERS TO COOPERATE WITH THE DEPARTMENT OF COMMERCE IN ANY INVESTIGATION OF A VIOLATION OF THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT INVOLVING A PROHIBITED ACT OR PRACTICE OR AN ABUSIVE ACT OR PRACTICE; AND AMENDING SECTIONS 30-14-1403, 30-14-1411, AND 30-14-1412, MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

Section 1. Section 30-14-1403, MCA, is amended to read:

12

"30-14-1403. Definitions. As used in this part, the following definitions apply:

13

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

14
15

(2) "Department" means the department of commerce created in 2-15-1801.

16

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

17
18

~~(4)~~ "INTEREXCHANGE CARRIER" MEANS A TELECOMMUNICATIONS CARRIER THAT PROVIDES INTERSTATE OR INTRASTATE LONG-DISTANCE SERVICES.

19
20

~~(4)~~~~(5)~~ "Local exchange company" has the meaning provided in 53-19-302.

21

~~(4)~~~~(5)~~~~(6)~~ "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

22
23
24

~~(5)~~~~(6)~~~~(7)~~ "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

25
26

~~(6)~~~~(7)~~~~(8)~~ "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

27
28

~~(7)~~~~(8)~~~~(9)~~ "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to

29
30

1 receive a prize or purported prize.

2 ~~(8)(9)(10)~~ "Seller" means a person who, in connection with a telemarketing transaction, provides,
3 offers to provide, or arranges for others to provide goods or services to the consumer in exchange for
4 consideration.

5 ~~(9)(10)(11)~~ "Solicitation" means a written or oral notification or advertisement that:

6 (a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video,
7 cinematic, telephonic, or electronic means to a consumer; and

8 (b) in the case of a notification or advertisement other than by telephone, either of the following
9 conditions is met:

10 (i) the notification or advertisement is followed by a telephone call from a seller or telemarketer;

11 or

12 (ii) the notification or advertisement induces a response by telephone and, through that response,
13 a seller or telemarketer attempts to make a sale of goods or services.

14 ~~(10)(11)(12)~~ "Supervised financial organization" means any bank, trust company, savings and loan
15 association, mutual savings bank, credit union, industrial loan company, consumer finance lender,
16 commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency
17 of this or any other state of the United States or an agency, bureau, or department of government of the
18 United States.

19 ~~(11)(12)(13)~~ "Telemarketer" means a person, located within or outside of this state, who in
20 connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The
21 term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in
22 telemarketing at the direction of a seller.

23 ~~(12)(13)(14)~~ "Telemarketing" means a plan, program, or campaign that is conducted by telephone
24 to induce the purchase of goods or services and that involves more than one telephone call to a
25 consumer."

26

27 **Section 2.** Section 30-14-1411, MCA, is amended to read:

28 **"30-14-1411. Prohibited acts and practices -- cooperation of local exchange companies AND**
29 **INTEREXCHANGE CARRIERS.** (1) It is a violation of this part for a seller or telemarketer, purposely or knowingly,
30 to engage in the following conduct:

1 (a) advertise or represent that registration as a seller or telemarketer equals an endorsement or
2 approval by the state or any political subdivision of the state;

3 (b) assist, support, or provide substantial assistance to any telemarketer when the seller knew or
4 should have known that the telemarketer was engaged in any act or practice violating 30-14-1408 or this
5 section;

6 (c) request a fee in advance to remove derogatory information from or improve a person's credit
7 history or credit record;

8 (d) request or receive payment in advance from a person to recover or otherwise aid in the return
9 of money or any other item lost by the person in a prior telemarketing transaction; however, this
10 subsection does not apply to services rendered to a person by a licensed attorney;

11 (e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a
12 person's checking, savings, bond, or other account without the person's express written authorization;
13 or

14 (f) procure the services of any professional delivery, courier, or other pickup service to obtain
15 immediate receipt or possession of a person's payment unless the goods are delivered with the opportunity
16 to inspect them before any payment is collected.

17 (2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103
18 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and
19 Consumer Protection Act of 1973.

20 (3) Local exchange companies AND INTEREXCHANGE CARRIERS TO THE EXTENT NOT OTHERWISE PROHIBITED
21 OR LIMITED BY APPLICABLE FEDERAL LAW OR MONTANA PUBLIC SERVICE COMMISSION REGULATIONS shall fully
22 cooperate with the department in any investigation of an alleged violation of this section."
23

24 **Section 3.** Section 30-14-1412, MCA, is amended to read:

25 **"30-14-1412. Abusive acts and practices -- cooperation of local exchange companies AND**
26 **INTEREXCHANGE CARRIERS.** (1) It is an abusive telemarketing act or practice and a violation of this part for
27 any seller or telemarketer to engage in the following conduct:

28 (a) use threatening, intimidating, or profane or obscene language;

29 (b) engage any person repeatedly or continuously with behavior a reasonable person would
30 consider annoying, abusive, or harassing;

1 (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR
2 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or
3 telemarketer;

4 (d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and
5 9 p.m. local time at the called person's location; or

6 (e) engage in any other conduct that would be considered abusive to any reasonable consumer.

7 (2) The department or the attorney general may seek injunctive or declaratory relief or any other
8 remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

9 (3) Local exchange companies AND INTEREXCHANGE CARRIERS TO THE EXTENT NOT OTHERWISE PROHIBITED
10 OR LIMITED BY APPLICABLE FEDERAL LAW OR MONTANA PUBLIC SERVICE COMMISSION REGULATIONS shall fully
11 cooperate with the department in any investigation of an alleged violation of this section."

12 - END -